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SUBJECT: MUCH IMPROVED ICT CHARTER DELIVERED TO SAG

REFTEL: A) PRETORIA 1166

B) PRETORIA 937
B) PRETORIA 922
B) PRETORIA 425
C) 04 PRETORIA 5063

(U) This cable is sensitive but unclassified. Not for Internet distribution.

1. (SBU) SUMMARY. The information and communications technology (ICT) Charter Steering Committee delivered its final draft of the ICT empowerment Charter to Minister of Communications Ivy Matsepe-Casaburri May 5. This draft has been reduced from ninety to thirty pages and is a significant improvement in both form and substance from earlier drafts. The draft elaborates on equity exemptions, overscoring, bonus points, as well as the roles and composition of the Charter Council. Initial responses from U.S. multinational firms operating in South Africa are positive although some say that additional clarification is needed on equity exemptions and approved equity equivalents. Additional changes may be made to the Charter as the Department of Trade and Industry (DTI) releases additional empowerment guidelines (aka Codes of Good Practice). The ICT Charter Steering Committee has requested that the Charter be published as a Code of Good Practice for the ICT industry, which means that efforts by ICT firms to comply with scorecard targets will be measured according to the ICT Charter scorecard as opposed to DTI's generic scorecard. A copy of the ICT Charter has been sent to AF/S. END SUMMARY.

2. (SBU) Following substantive April consultations with U.S. multinationals and other industry stakeholders, the information and communications technology (ICT) Charter Steering Committee delivered its final draft of the ICT empowerment Charter to Minister of Communications Ivy Matsepe-Casaburri May 5. Executive Director of the American Chamber of Commerce in South Africa (AmCham) Luanne Grant and representatives of U.S. multinationals operating in South Africa told Econoff that overall they are pleased with the new draft Charter., although implementation will present new challenges. Equally important, the new draft Charter represents acceptance of the principle of equity offsets. They also said that the Charter appears to be more in line with their recommendations.

NEW ICT CHARTER SCORECARD TARGETS

3. (U) This draft was trimmed from ninety to thirty pages and is a significant improvement in both form and substance from earlier versions. ICT Charter scorecard targets are in line with the Department of Trade and Industry's generic scorecard published with the Codes of Good Practice in December 2004. ICT Charter targets are as follows:

Access to ICTs and Corporate Social Investment: 1.5 percent of profit before tax.

Enterprise Development: Quantifiable support equal to 5 percent of eligible procurement for black small businesses.

Preferential Procurement: 70 percent of eligible procurement should be conducted with empowered companies.

Skills Development: 2 percent of payroll for investment in skills development programs. Companies should also provide learnerships (i.e., internships) equivalent to 5 percent of its number of employees.

Employment Equity: 50 percent of senior management should be historically disadvantaged individuals (HDIs). 65 percent of other management positions should be held by HDIs.

Management and Control: 60 percent of a company's governing body should be comprised of HDIs. Of this number, half

should be women.

Equity Ownership: 30 percent.

SIGNIFICANT CHARTER CHANGES

14. (SBU) U.S. multinational firms are pleased with a number of changes that were made in the Charter. For instance, a company's BEE status is no longer tied to minimum requirements in each of the seven scorecard components. Instead, BEE status is based on the cumulative score. With the opportunity to earn bonus points, this effectively allows companies to overscore in certain scorecard areas to compensate for low scores in others. The role and composition of the ICT Charter Council were also clarified. In addition, companies were concerned that the name of the certificate to be given to companies exempted from the equity ownership target carried negative connotations. The certificate will now be called a "Certificate of Approval" rather than a "Certificate of Permitted Non-Compliance."

15. (SBU) Finally, while no blanket exemptions will be granted in the area of equity ownership, exemption conditions were clarified. Companies seeking a Certificate of Approval will apply to the Charter Council and disclose their total revenues accrued directly or indirectly from South Africa. The companies will propose equity alternatives such as establishing partnerships with black companies to increase research and development activities, expand manufacturing or assembling plants, or identify new investments. Equity exempt companies will be allocated points for these equity equivalents based on the ratio of the cost of investment to total revenue generated in South Africa. IBM Director of BEE and Corporate Planning Jimmy Manyi told Econoff that this additional detail is a "step in the right direction," but that further refinement and clarification is needed on these points.

IS THIS REALLY THE FINAL ICT CHARTER?

16. (U) While ICT Charter Steering Committee Chairperson Joe Mjwara described this as the final draft Charter, he acknowledged that it may be updated as the remaining unpublished Codes of Good Practice become available. After the Minister of Communications signs off on the Charter it will undergo a 2-3 week Cabinet review before being published by DTI for a 60-day public comment period. It is possible that changes could be proposed during any one of these subsequent phases.

17. (U) The ICT Charter Steering Committee is asking government to publish this Charter as a Code of Good Practice for the ICT industry as opposed to a Transformation Charter. Redundancy in the use of the term "Code of Good Practice" has been confusing to industry. DTI's Codes of Good Practice are government's general BEE guidelines. In addition, an industry charter may also become a Code of Good Practice for that sector. Transformation Charters have been developed by major stakeholders and advance the objectives of the Broad-Based BEE Act, but fall short of complying with the requirements of the Codes of Good Practice. This deficiency prevents the Charter from being published as an industry Code of Good Practice. The difference between the two is significant. DTI's generic scorecard will be used to measure empowerment progress where industries are governed by a Transformation Charter whereas the Charter scorecard will be used to measure empowerment compliance only when the industry Charter has been published as a Code of Good Practice.

18. (U) A copy of the latest draft of the ICT Charter has been sent to AF/S.

FRAZER